

**RESTAURANTS (TEMPORARY CUSTOMS DUTY RELIEF) ACT  
2002**

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**BERMUDA  
2002 : 30**

**RESTAURANTS (TEMPORARY CUSTOMS DUTY RELIEF) ACT  
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[Date of Assent: 27 August 2002]

[Operative Date: 1 January 2002]

WHEREAS it is expedient to establish temporary arrangements for granting relief from customs duty in connection with capital investment in a restaurant:

Be it enacted by The Queen's Most Excellent Majesty, by and with the advice and consent of the Senate and the House of Assembly of Bermuda, and by the authority of the same, as follows:—

**Short title and commencement**

1 This Act may be cited as the Restaurants (Temporary Customs Duty Relief) Act 2002 shall be deemed to have come into operation on 1 January 2002.

**Interpretation and application**

2 (1) This Act shall be construed as one with the Customs Tariff Act 1970 and, accordingly, any expression used in this Act that is used in that Act has the meaning in this Act that it has in that Act unless the contrary is expressed or implied.

(2) In this Act—

"application" means application for an approval;

"approval" means approval under section 4, and "approve" has a corresponding meaning;

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"the Collector" means the Collector of Customs;

"the Customs Tariff" means the rates of duty and other provisions specified in the seven Schedules to the Customs Tariff Act 1970, as having effect under that Act;

"import" means import into Bermuda;

"Minister" means the Minister of Finance;

"planning permission" has the meaning assigned to that expression by section 1 of the Development and Planning Act 1974;

"relief" means the relief from customs duty described in section 6;

"restaurant" and "restaurateur" have the meaning assigned to those expressions respectively in section 1 of the Restaurant Act 1961;

"scheme" means a capital investment scheme for a restaurant that began on or after the date that this Act is deemed to have come into operation;

"statutory period", in relation to goods in respect of which relief has been granted, means—

- (a) where the goods were imported before 1 January 2002, the period of three years beginning on that date;
- (b) in any other case, the period of three years beginning on the date the goods were imported.

**Applications for approval of schemes**

3 (1) A restaurateur may apply to the Minister for a scheme to be approved in respect of his restaurant.

(2) An application shall be made in writing and shall furnish such information as the Minister may require.

(3) Requirements made under subsection (2) may differ as between different applications.

**Minister may grant or refuse approvals**

4 (1) The Minister may grant or refuse approval of a scheme, or may grant approval subject to such conditions as he may specify in the approval.

(2) The Minister shall not grant or refuse an approval without first consulting the Minister responsible for health.

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(3) The Minister shall refuse an approval if he determines that it is not in the public interest that an approval should be granted.

(4) The Minister need not give any reasons for granting, or attaching conditions to, or refusing, an approval.

(5) The decision of the Minister to grant an approval, or to grant an approval subject to conditions, or to refuse an approval, is final for all purposes and is not subject to any appeal.

### **Applicants to be informed of outcome**

5 As soon as the Minister has determined an application under section 4, he shall cause notice in writing of approval, or approval subject to conditions, or refusal, as the case may require, to be delivered to the applicant.

### **Customs duty relief**

6 (1) Goods to which an approval applies are entitled to relief, that is to say, customs duty in respect of them is 0% *ad valorem* notwithstanding that a different rate of duty may be prescribed by the Customs Tariff.

(2) Goods to which an approval applies must be goods falling within the description in the Schedule.

(3) If any question arises in any case as to the scope or meaning of any term used or provision made in the Schedule, that question shall be decided by the Minister alone, whose answer is final and not subject to any appeal.

(4) Where prior to the enactment of this Act an entitled person had paid customs duty on any goods falling within the description in the Schedule for the purposes of a scheme, then, on the date of such enactment, that person is entitled to a refund of customs duty so paid.

### **Administration of relief**

7 (1) Subject to this Act, relief may be made available to an entitled person by such administrative methods and procedures as the Collector may establish.

(2) Relief shall not be made available in respect of goods—

(a) except in response to a claim in writing; and

(b) unless, subject to subsection (3)—

(i) the goods are imported before 31 December 2004; and

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(ii) the claim is received by the Collector no later than one calendar month after that date, or such later date as the Minister may allow.

(3) The Minister may by an order made under this subsection delete that date from subsection (2)(b)(i) and substitute a different date.

(4) An order made under subsection (3) is subject to the affirmative resolution procedure.

(5) In this section "entitled person" means a person referred to in section 8(1).

**Duties of claimants for relief**

8 (1) Either of the following (but none other) may be a claimant for relief in respect of goods, namely,—

- (a) the restaurateur in question himself; or
- (b) that person, being a person in Bermuda, who supplied the goods to the restaurateur.

(2) A person who will be making a claim for relief by virtue of paragraph (b) of subsection (1) shall make himself known to the Collector as soon as may be so that the requirements of this section may be fulfilled in relation to him.

(3) Every person to whom this subsection applies shall, throughout the period beginning, in the case of a restaurateur, on the day he ordered or imported or purchased the goods and, in any other case, on the day the person in question ordered or imported the goods, and ending six months after the expiry of the statutory period—

- (a) maintain at his place of business in Bermuda such full and proper records of the goods as the Collector may from time to time require; and
- (b) whenever so required by the Collector, within 24 hours produce, for inspection by the Collector or any person authorized by him for the purpose, those records or such portion of them as the Collector may specify.

(4) Subsection (3) applies to every restaurateur for whom a scheme has been approved and to every person who will be making a claim for relief by virtue of paragraph (b) of subsection (1).

(5) The Collector may give to any person to whom subsection (3) applies such reasonable directions as the Collector deems necessary for the purpose of ensuring that relief is made available to persons entitled to relief and is not enjoyed by others; and a person to whom such a direction is lawfully given shall comply with the direction.

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(6) A restaurateur for whom a scheme has been approved shall, whenever so required by the Collector during the period mentioned in subsection (3), permit the Collector or any person authorized by him for the purpose to inspect the restaurant premises, or, as the case may be, the goods, to which the approved scheme applies.

**Cancellation of approvals**

9 (1) The Minister may cancel an approval under this section in the case of fraudulent or deceitful conduct on the part of the restaurateur in question, being fraudulent or deceitful conduct affecting the approval, or for other good cause.

(2) Before the Minister cancels an approval under this section, he shall—

- (a) give the restaurateur in question notice in writing of the reason why he is minded to cancel the approval; and
- (b) afford the restaurateur an opportunity to make objection in writing within the period of 14 days after receipt of the notice; and
- (c) take any such objection into account,

and, if the Minister thereafter decides to cancel the approval, he shall cause an order cancelling the approval to be served on the restaurateur.

(3) An order cancelling an approval takes effect on the date on which it is served under subsection (2).

(4) Such an order is final for all purposes and is not subject to any appeal.

**Customs duty where duty-relieved goods are disposed of**

10 (1) Subject to subsections (2) and (3), where a person intends, within the statutory period, to dispose of goods to any other person, being goods in respect of which relief has been made available to any person under this Act, then that first-mentioned person shall—

- (a) inform the Collector of his intention prior to the disposal, and thereafter comply with any directions that the Collector may give him in writing as to the furnishing of information about the disposal; and
- (b) prior to the disposal pay to the Collector by way of duty an amount equal to the duty which would be payable in respect of the goods if they were then being imported, reduced by the net amount of duty that was paid in respect of the goods.

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(2) Paragraph (b) of subsection (1) does not apply in relation to a disposal arising by reason that the restaurant premises in question are sold to a purchaser or leased to a tenant, being a purchaser or tenant who is a restaurateur.

### **Offence: failing to comply with requirement, etc.**

11 If a person fails without reasonable excuse (the proof of which is upon him) to comply with a requirement or direction made of or given to him under this Act by the Collector, he commits an offence against this section.

### **Offence: false information, etc.**

12 If a person—

- (a) in or in relation to an application makes to the Minister any statement, or otherwise under this Act supplies to the Minister or the Collector any information which that person knows to be false or does not believe to be true; or
- (b) without reasonable excuse (the proof of which is upon him) fails to disclose to the Minister or the Collector any information which that person knows or believes, or ought reasonably to know or believe, that he is expected to supply pursuant to a requirement made of him under this Act,

he commits an offence against this section.

### **Other offences**

13 (1) If a person fails to comply with a duty or prohibition imposed upon him by or under a provision to which this section applies, he commits an offence against this section.

(2) The provisions to which this section applies are subsections (3) and (6) of section 8 and subsection (1) of section 10.

### **Penalties and forfeitures**

14 (1) A person who commits an offence against section 11 is liable to forfeit a penalty not exceeding \$1,200.

(2) Subject to subsection (3) of this section, a person who commits an offence against section 12 or 13 is liable to forfeit a penalty not exceeding \$6,000.

(3) Where duty is lost to the Revenue as a result of an offence having been committed against section 12 or 13, subsection (2) of this

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section has effect subject to the insertion next after "\$6,000" of the words "or, at the election of the Collector, five times the amount of the duty lost to the Revenue by reason of the commission of the offence,".

(4) For the avoidance of doubt, it is hereby declared that the provisions of sections 110, 111, 112, 114 and 115 of the Revenue Act 1898 apply *mutatis mutandis* in relation to penalties and forfeitures under this section as those provisions apply in relation to penalties and forfeitures under that Act.

(5) Subsection (4) of this section is without prejudice to the application in relation to penalties and forfeitures under this section of any other provision of the Revenue Act 1898 that is also applicable in relation to those penalties and forfeitures according to the tenor of that provision.

(6) Any offence against this Act is triable by a court of summary jurisdiction.

**Offences by corporations**

15 Where an individual who has committed an offence against this Act was at the time he committed the offence a director, manager, secretary or other similar functionary of a body corporate and committed the offence in that capacity, then the body corporate also is guilty of the offence and liable to be proceeded against and punished accordingly.

**SCHEDULE** (Section 6(2))

GOODS TO WHICH AN APPROVAL OF A SCHEME MAY APPLY FOR  
PURPOSES OF RELIEF

1. The goods must be capital goods to be used in the execution of a capital investment scheme for a restaurant.
2. For the purposes of paragraph 1, "goods" means goods imported on or after 1 January 2002 except that the Collector may in any particular case direct that goods imported before that date may be allowed relief for special reasons; but does not include construction equipment, operating supplies, marine equipment or vehicles.